



February 13, 2009

## HOUSE BILL No. 1394

DIGEST OF HB 1394 (Updated February 11, 2009 4:06 pm - DI 101)

**Citations Affected:** IC 32-29; IC 36-2.

**Synopsis:** Mortgage transfer and securitization disclosure. Requires a transfer of mortgage to be recorded if it is on real property for which the borrower is receiving the homestead standard deduction at the time the mortgage is issued or the transfer is made. Provides that if a lender transfers a mortgage on real property for which the borrower is receiving the homestead standard deduction at the time the mortgage is issued or the transfer is made, the lender must notify the borrower, record a mortgage securitization disclosure statement, and pay a fee. Deposits \$0.50 of the fee in the recorder's record perpetuation fund and the remainder in the state general fund. Provides that the fee is \$250, if the transfer involves the securitization of the mortgage with other mortgages, or \$100, if the transfer is not part of a securitization with other mortgages.

**Effective:** July 1, 2009.

**DeLaney**

January 13, 2009, read first time and referred to Committee on Financial Institutions.  
February 12, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

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HB 1394—LS 7586/DI 58+



February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1394

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A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 32-29-1-12 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 12. (a) As used in this section, "borrower" has the**  
4 **meaning set forth in IC 32-29-2.5-1.**

5       **(b) As used in this section, "covered mortgage" means a**  
6 **mortgage on real property with respect to which the borrower is**  
7 **receiving the homestead standard deduction under IC 6-1.1-12-37**  
8 **at the time the mortgage is issued or a transfer of the mortgage is**  
9 **made.**

10       **(c) As used in this section, "transfer" has the meaning set forth**  
11 **in IC 32-29-2.5-7.**

12       **(d) If a covered mortgage is transferred in any manner, the**  
13 **transferor or a transferee shall notify the borrower in writing of**  
14 **the transfer not later than thirty (30) days after the transfer. The**  
15 **notice must include the name, address, phone number, and any**  
16 **other contact information for both the transferor and each**  
17 **transferee. The transferor and each transferee shall sign the notice.**

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A person that signs a notice shall attest in writing and under penalties of perjury that to the best of the person's knowledge and belief the information contained in the notice is true and correct.

(e) To be recorded, a written instrument that transfers a covered mortgage must state that the notice required by subsection (b) has been provided to the borrower.

SECTION 2. IC 32-29-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A person who transfers or assigns a mortgage within Indiana shall do so in writing by:

(1) noting the assignment or transfer on the record recording the mortgage; or

(2) separate written instrument.

A person who transfers or assigns a mortgage as described in this section shall cause the notation or written instrument to be acknowledged before an officer authorized to take acknowledgments of the execution of mortgages.

(b) If an assignment or a transfer pertains to a mortgage on real property for which the borrower is receiving the homestead standard deduction at the time the mortgage is issued or the assignment or transfer is made, the assignment or transfer shall be recorded in the county recorder's office.

SECTION 3. IC 32-29-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

#### **Chapter 2.5. Mortgage Transfers**

Sec. 1. As used in this chapter, "borrower" means the grantor of a mortgage.

Sec. 2. As used in this chapter, "covered mortgage" has the meaning set forth in IC 32-29-1-12.

Sec. 3. As used in this chapter, "lender" means:

(1) the issuer of a covered mortgage; or

(2) if a covered mortgage has been transferred of record, the last person to whom the covered mortgage has been transferred of record.

Sec. 4. As used in this chapter, "mortgage" means a consensual interest in real property that secures payment or performance of an obligation.

Sec. 5. As used in this chapter, "person" means an individual, a corporation, or any other legal entity.

Sec. 6. As used in this chapter, "record" means to record with the county recorder.

Sec. 7. As used in this chapter, "transfer" includes any sale,

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transfer, or assignment of a covered mortgage to another person.

Sec. 8. As used in this chapter, "transferee" means a person to whom a covered mortgage is transferred.

Sec. 9. (a) If a lender transfers a covered mortgage, the lender or a transferee shall complete a mortgage securitization disclosure statement that includes all the following:

(1) The contents of the notice required by IC 32-29-1-12.

(2) A concise statement that the covered mortgage is or is not part of a securitization with other mortgages.

(3) A place for the lender and transferee to sign the statement.

(b) The lender and each transferee shall sign the mortgage securitization disclosure statement. A person that signs a mortgage securitization disclosure statement shall attest in writing and under penalties of perjury that to the best of the person's knowledge and belief the information contained in the mortgage securitization disclosure statement is true and correct.

(c) A mortgage securitization disclosure statement must be recorded in the county recorder's office before a transfer of the covered mortgage may be accepted for recording. The lender or a transferee shall also send a copy of the signed mortgage securitization disclosure statement to the department of financial institutions. Each year, the department of financial institutions shall prepare an annual report on the mortgage securitization disclosure statements filed and fees collected under this chapter for the previous calendar year. The report for a calendar year shall be published by posting the report on the official web site for the department before February 1 of the following calendar year.

Sec. 10. (a) The fee for recording a mortgage securitization disclosure statement is in addition to any other fees for recording a mortgage transfer document. The fee is as follows:

(1) The fee is two hundred fifty dollars (\$250) if the transfer involves the securitization of the covered mortgage with other mortgages.

(2) The fee is one hundred dollars (\$100) if the transfer does not involve the securitization of the covered mortgage with other mortgages.

(b) The fee may not be passed on or charged to the borrower, and any agreement to the contrary is void and has no effect.

SECTION 4. IC 36-2-7-10, AS AMENDED BY P.L.3-2008, SECTION 256, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) The county recorder shall tax and collect the fees prescribed by this section for recording, filing,

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copying, and other services the recorder renders, and shall pay them into the county treasury at the end of each calendar month. The fees prescribed and collected under this section supersede all other recording fees required by law to be charged for services rendered by the county recorder.

(b) The county recorder shall charge the following:

(1) Six dollars (\$6) for the first page and two dollars (\$2) for each additional page of any document the recorder records if the pages are not larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(2) Fifteen dollars (\$15) for the first page and five dollars (\$5) for each additional page of any document the recorder records, if the pages are larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(3) For attesting to the release, partial release, or assignment of any mortgage, judgment, lien, or oil and gas lease contained on a multiple transaction document, the fee for each transaction after the first is the amount provided in subdivision (1) plus the amount provided in subdivision (4) and one dollar (\$1) for marginal mortgage assignments or marginal mortgage releases.

(4) One dollar (\$1) for each cross-reference of a recorded document.

(5) One dollar (\$1) per page not larger than eight and one-half (8 1/2) inches by fourteen (14) inches for furnishing copies of records and two dollars (\$2) per page that is larger than eight and one-half (8 1/2) inches by fourteen (14) inches.

(6) Five dollars (\$5) for acknowledging or certifying to a document.

(7) Five dollars (\$5) for each deed the recorder records, in addition to other fees for deeds, for the county surveyor's corner perpetuation fund for use as provided in IC 21-47-3-3 or IC 36-2-12-11(e).

(8) A fee in an amount authorized under IC 5-14-3-8 for transmitting a copy of a document by facsimile machine.

(9) A fee in an amount authorized by an ordinance adopted by the county legislative body for duplicating a computer tape, a computer disk, an optical disk, microfilm, or similar media. This fee may not cover making a handwritten copy or a photocopy or using xerography or a duplicating machine.

(10) A supplemental fee of three dollars (\$3) for recording a document that is paid at the time of recording. The fee under this subdivision is in addition to other fees provided by law for

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recording a document.

(11) Three dollars (\$3) for each mortgage on real estate recorded, in addition to other fees required by this section, distributed as follows:

(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.

(B) Two dollars and fifty cents (\$2.50) is to be distributed to the auditor of state on or before June 20 and December 20 of each year as provided in IC 24-9-9-3.

(12) This subdivision applies in a county only if at least one (1) unit in the county has established an affordable housing fund under IC 5-20-5-15.5 and the county fiscal body adopts an ordinance authorizing the fee described in this subdivision. An ordinance adopted under this subdivision may authorize the county recorder to charge a fee of:

(A) two dollars and fifty cents (\$2.50) for the first page; and

(B) one dollar (\$1) for each additional page; of each document the recorder records.

(13) This subdivision applies in a county containing a consolidated city that has established a housing trust fund under IC 36-7-15.1-35.5(e). The county fiscal body may adopt an ordinance authorizing the fee described in this subdivision. An ordinance adopted under this subdivision may authorize the county recorder to charge a fee of:

(A) two dollars and fifty cents (\$2.50) for the first page; and

(B) one dollar (\$1) for each additional page; of each document the recorder records.

**(14) A fee in the amount set forth in IC 32-29-2.5 for recording a mortgage securitization disclosure statement shall be collected by the recorder and shall be distributed by the county treasurer as follows:**

**(A) Fifty cents (\$0.50) is to be deposited in the recorder's record perpetuation fund.**

**(B) The remainder is to be distributed to the auditor of state on or before June 20 and December 20 of each year for deposit in the state general fund.**

(c) The county recorder shall charge a two dollar (\$2) county identification security protection fee for recording or filing a document. This fee shall be deposited under IC 36-2-7.5-6.

(d) The county treasurer shall establish a recorder's records perpetuation fund. All revenue received under section 10.1 of this chapter and subsection (b)(5), (b)(8), (b)(9), and (b)(10), and fifty cents

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(b)(11) and (b)(14), shall be deposited in this fund. The county recorder may use any money in this fund without appropriation for the preservation of records and the improvement of record keeping systems and equipment. Money from the fund may not be deposited or transferred into the county general fund and does not revert to the county general fund at the end of a fiscal year.

(e) As used in this section, "record" or "recording" includes the functions of recording, filing, and filing for record.

(f) The county recorder shall post the fees set forth in subsection (b) in a prominent place within the county recorder's office where the fee schedule will be readily accessible to the public.

(g) The county recorder may not tax or collect any fee for:

(1) recording an official bond of a public officer, a deputy, an appointee, or an employee; or

(2) performing any service under any of the following:

(A) IC 6-1.1-22-2(c).

(B) IC 8-23-7.

(C) IC 8-23-23.

(D) IC 10-17-2-3.

(E) IC 10-17-3-2.

(F) IC 12-14-13.

(G) IC 12-14-16.

(h) The state and its agencies and instrumentalities are required to pay the recording fees and charges that this section prescribes.

(i) This subsection applies to a county other than a county containing a consolidated city. The county treasurer shall distribute money collected by the county recorder under subsection (b)(12) as follows:

(1) Sixty percent (60%) of the money collected by the county recorder under subsection (b)(12) shall be distributed to the units in the county that have established an affordable housing fund under IC 5-20-5-15.5 for deposit in the fund. The amount to be distributed to a unit is the amount available for distribution multiplied by a fraction. The numerator of the fraction is the population of the unit. The denominator of the fraction is the population of all units in the county that have established an affordable housing fund. The population to be used for a county that establishes an affordable housing fund is the population of the county outside any city or town that has established an affordable housing fund.

(2) Forty percent (40%) of the money collected by the county

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recorder under subsection (b)(12) shall be distributed to the treasurer of state for deposit in the affordable housing and community development fund established under IC 5-20-4-7 for the purposes of the fund.

Money shall be distributed under this subsection before the sixteenth day of the month following the month in which the money is collected from the county recorder.

(j) This subsection applies to a county described in subsection (b)(13). The county treasurer shall distribute money collected by the county recorder under subsection (b)(13) as follows:

(1) Sixty percent (60%) of the money collected by the county recorder under subsection (b)(13) shall be deposited in the housing trust fund established under IC 36-7-15.1-35.5(e) for the purposes of the fund.

(2) Forty percent (40%) of the money collected by the county recorder under subsection (b)(13) shall be distributed to the treasurer of state for deposit in the affordable housing and community development fund established under IC 5-20-4-7 for the purposes of the fund.

Money shall be distributed under this subsection before the sixteenth day of the month following the month in which the money is collected from the county recorder.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1394, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, after "(a)" insert **"As used in this section, "borrower" has the meaning set forth in IC 32-29-2.5-1.**

**(b)".**

Page 1, line 4, delete "for which the owner" and insert **"with respect to which the borrower"**.

Page 1, line 6, delete "granted or a mortgage assignment" and insert **"issued or a transfer of the mortgage"**.

Page 1, between lines 7 and 8, begin a new paragraph and insert:

**"(c) As used in this section, "transfer" has the meaning set forth in IC 32-29-2.5-7."**

Page 1, line 8, delete "(b)" and insert **"(d)"**.

Page 1, line 9, after "or" insert **"a"**.

Page 1, line 17, delete "(c)" and insert **"(e)"**.

Page 1, line 17, delete "or".

Page 2, line 1, delete "assigns".

Page 2, line 13, after "assignment" insert **"or a transfer"**.

Page 2, line 14, delete "owner" and insert **"borrower"**.

Page 2, line 15, delete "granted or the assignment" and insert **"issued or the assignment or transfer"**.

Page 2, line 16, after "assignment" insert **"or transfer"**.

Page 2, line 26, delete "grantee" and insert **"issuer"**.

Page 2, line 27, delete "assigned" and insert **"transferred"**.

Page 2, line 28, delete "assigned" and insert **"transferred"**.

Page 2, line 42, after "or" insert **"a"**.

Page 3, line 6, delete "A lender and transferee shall both" and insert **"The lender and each transferee shall"**.

Page 3, line 13, delete "an assignment" and insert **"a transfer"**.

Page 3, line 15, after "or" insert **"a"**.

Page 3, line 20, after "previous" insert **"calendar"**.

Page 3, line 20, after "a" insert **"calendar"**.

Page 3, line 22, after "following" insert **"calendar"**.

Page 3, line 25, delete "assignment" and insert **"transfer"**.

Page 3, line 29, delete "is not" and insert **"does not involve the securitization of the covered mortgage"**.

Page 3, line 30, delete "part of a securitization".

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Page 3, line 31, delete "mortgagor," and insert "**borrower**".  
and when so amended that said bill do pass.

(Reference is to HB 1394 as introduced.)

BARDON, Chair

Committee Vote: yeas 7, nays 4.

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